

**REMARKS****Claim Status**

Claims 1-10 and 12-22 are pending in the application. This paper amends claims 1, 2, 5, and 21; and adds new claim 22. Claim 1 is the independent claims of the application.

**Art Rejections**

The Office Action rejected claims 1, 3-5, 9, 10, 16, and 20 “under 35 U.S.C. 103(a) as being unpatentable over Danish et al (6,412,012) in view of Official Notice.” Applicant<sup>1</sup> understands this rejection to be based on Danish *et al.*, U.S. Patent Number 6,327,588 (“Danish” hereinafter).<sup>2</sup> The Office Action also rejected claims 2, 6-8, 12-15, and 17-19 under 35 U.S.C. 103(a) as being unpatentable over Danish in view of Official Notice and in further view of Weaver, U.S. Patent Number 6,404,426 (“Weaver” hereinafter). Claim 21 was rejected under the same statutory provision as being unpatentable over Danish in view of Official Notice, Weaver, and Hashimoto *et*

---

<sup>1</sup> References to Applicant should be understood as references to the undersigned attorney, who is acting on behalf of Applicant.

<sup>2</sup> The applicants in United States Patent Number 6,412,012 were Bieganski *et al.*, not Danish *et al.* The Bieganski patent was used as a basis for rejections in the previous Office Action, which rejections were overcome by the previous response of Applicant in this case. On the other hand, Danish is also used as a basis for rejections of dependent claims made in the present Office Action. It appears therefore that citing “Danish et al (6,412,012)” was a clerical error in the Office Action, and the intended reference was U.S. Patent Number 6, 327,588. We proceed on this assumption.

*al.*, U.S. Patent Number 5,729,699 (“Hashimoto” hereinafter). Applicant respectfully traverses the rejections and requests reconsideration in view of the following arguments.

*Claims 1, 3-5, 9, 10, 16, and 20*

With respect to claims 1, 3-5, 9, 10, 16, and 20, the Office Action asserts that Danish discloses all the features of these claims. For convenience of discussion, independent claim 1, as amended but without mark-ups, is set forth below:

1. An electronic system for purchasing merchandise online using a computer having a display device, comprising:

means for selecting and purchasing merchandise, by a user, online; and

an interactive wizard guide, selectively and optionally deployed by the user, for making online merchandise recommendations and computer-assisted selections tailored to said user, said interactive wizard guide comprising:

means for prompting the user to specify preferences regarding at least one type of merchandise of interest to said user, said prompting means includes means for prompting the user to answer a plurality of questions,

means for receiving the preferences and answers to the plurality of questions to create a user profile,

means for searching in and retrieving data from at least one database using predetermined intelligence rules together with said user profile to determine said recommendations and said selections of said merchandise and accessories to said merchandise,

means, in response to said retrieving means, for displaying on said display device, said recommendations and said selections of said merchandise and said accessories, and

means for overriding said interactive wizard guide.

This claim is directed to an electronic system that comprises an interactive wizard guide. The interactive wizard guide can be selectively and optionally deployed by the user of the system to make online purchasing recommendations tailoredized (*i.e.*, tailored) to the user. In contrast, Danish does not teach or suggest making recommendations to the user of the system disclosed in that document. In particular, Danish does not disclose or suggest means for receiving the user's preferences and answers to questions to create a profile of the user, or means for searching in and retrieving data from a database using predetermined intelligence rules together with the profile to determine the recommendations. Applicant respectfully submits that Danish does not render claim 1 obvious at least for the above reasons.

Dependent claim 4 recites means for providing the user with names of a plurality of vendors for the merchandise recommended to the user. Danish apparently does not disclose multiple vendors. Indeed, it appears that Danish's system searches through products of a single vendor, AMP Incorporated. See, for example, Figures 1, 31-33, and 35. See also Figures 5, 7-10, and 26-30, which show products and the trade name FASTON<sup>®</sup>, a trademark of AMP Incorporated. Danish, col. 5, lines 42-45. At least for this reason, claim 4 and claim 5 (which depends from claim 4) are independently patentable over Danish.

According to the system claimed in dependent claim 9, retrieved data is stored in a local database which is smaller than the at least one database, thereby enabling the user to interact with the system without having to traffic data through a network and thus at a faster speed than would be possible if the user had to traffic data through the network. Danish apparently does not disclose or

suggest storing the retrieved data in a smaller database. Moreover, Danish does not disclose storing the retrieved information in a local database. Consider, for example, Danish's Figure 25, which "is a representation of a server and client configuration and the flow of data therebetween." Danish, col. 5, lines 6-7. Figure 25 shows FEATURE SCREEN STATUS 127 being transmitted from the SERVER 125 to the CLIENT 126, but does not show a small database being transmitted to the CLIENT 126. Moreover, Danish expressly states that "[a]ll of the program files and data files described in the local embodiment reside on the server 125." Danish, col. 18, lines 38-39. Danish also includes the following paragraph in the description of the operation of the Internet-based embodiment:

The client 126 initiates a request to the server 125 for the electronic catalog searching application via the Internet. The server 125 detects the request. Receipt of the request executes the requested application on the server 125 that permits a user on the client 126 to select a family 1 or subfamily 2. Example of Main Menu, Alphabetical search, Picture Search, and View Part Number screens are shown in FIGS. 31 through 35. When the family 1 or subfamily 2 is chosen, the server 125 sends a feature screen status 127 to the client 126. The feature screen status 127 comprises a feature screen code, ScreenNum 102 in a preferred embodiment, all features 5 appropriate to the feature screen 9 specified in ScreenNum 102, all available alternatives 7, all unavailable alternatives 8, and the selection criteria 14. As the selection criteria 14 is always sent, it may comprise zero selected alternatives 37. It is apparent, therefore, that the server 125 sends all of the information necessary to define the current subfamily 2 to the client 126. The information, therefore, need not be retained in memory on the server 125. This particular feature renders it particularly appropriate for an Internet environment. The client 126 receives the feature screen status 127 and displays the feature screen 9 accordingly. An example of the feature screen 9 on the Internet is shown in FIG. 26 through 29. The user on the client, makes selections from among the available alternatives 7 generating a selection criteria 14 different from that which was set to it. The client 126 initiates a search with the modified selection criteria 14. The client 126 sends to the server 125, the ScreenNum 102 value sent to it by the server, and the modified selection criteria 14. The server 125 receives the ScreenNum 102 and the selection criteria 14. The server 125 executes the search operation as disclosed hereinabove using the revised selection criteria 14 and generates the feature screen status 127. The server 125 sends the feature screen status 127 that has been updated based on the modified selection criteria 14 to the client 126. The client 126 receives the feature screen

status 127 and displays the updated feature screen 9. This process may iterate similar to the local version to further narrow the subfamily as desired.

Danish, col. 19, lines 1-39 (emphasis added). Thus, it appears that in Danish, the data are trafficked through the network for each search iteration, in contrast to the limitation recited in claim 1.

*Claims 2, 6-8, 12-15, and 17-19*

The Office Action rejected claims 2, 6-8, 12-15, and 17-19 under 35 U.S.C. § 103(a) as being unpatentable over Danish in view of Official Notice and further in view of Weaver. According to the Office Action, “[i]t would have been obvious to a person having ordinary skill in the art to include in Danish the virtual modeling capabilities as taught by Weaver, because this type of preview allows the user to become more comfortable with the purchased articles when the transaction is done online (col 1, lines 15-20).”

In the preferred embodiment described by Danish, the product family searched is FASTON Receptacles-Uninsulated. Danish, col. 5, lines 42-45. More generally, Danish’s “family of items 1 could be any commercial product or service offering with a common set of features 5 and alternatives 6, associated therewith.” Danish, col. 5, lines 38-40 (underlining added for emphasis). Applicant respectfully submits that the motivation to supplement Danish with virtual clothes modeling of Weaver does not apply in the context of electrical connectors, which are not modeled in the same sense as clothing. Moreover, it appears that the motivation to combine offered by the Office Action does not apply to commercial products, rather than clothing intended for personal use.

At least for this reason, Applicant respectfully traverses these rejections and submits that claims 2, 6-8, 12-15, and 17-19 are separately patentable.

With respect to claim 2, the Office Action states that it was well-known “to include links to other products in a recommendation list.” But claim 2 does not merely recite including “links to other products in a recommendation list.” The clause in question recites a merchandise database having textual and graphical data regarding the at least one type of merchandise, the merchandise database using said intelligence rules to match the merchandise with the accessories and having links to databases for other types of merchandise. Applicant believes that including links to databases for other types of merchandise in a list of recommendations was not well known.

With respect to Claim 19, the Office Action asserts that “[i]t was old and well known in the art . . . to be able to retrieve additional items that may not be on a provided list (i.e. adding to a shopping cart).” The issue, however, is not whether it was known to add items to a shopping cart, but whether it was obvious to add matching items to an array of recommendations. Applicant respectfully submits that claim 19 is separately patentable because the prior art does not disclose or suggest this limitation.

Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Danish in view of Official Notice, Weaver, and Hashimoto. The Office Action acknowledges that Danish and Weaver do not specifically teach the predetermined intelligence rules that pertain to determining whether two colors match. The Office Action then seeks to supplement Danish, Official Notice, and Weaver with

disclosure made in Hashimoto. To justify such combination, the Office Action asserts that it would have been obvious to combine Danish and Weaver with Hashimoto “because this would provide an additional feature that users, perhaps color blind or lacking in taste, could use to assure that the clothing being bought matches.”

Even if the rationale offered by the Office Action in support of combining the references suggests employing a color coordination rule,<sup>3</sup> it does not explain why the system would allow the user to override this rule. At least for this reason, Applicant respectfully submits that claim 21 is separately patentable over the cited references.

#### New Claim

New claim 22 is believed to be separately patentable because the references of record do not disclose or suggest a combination of elements as recited in this claim.

---

<sup>3</sup> No such admission is made herein.

Remarks Regarding Official Notice

The Office Action includes statements to the effect that Applicant has not made a “traverse” or “adequate traverse” of the factual assertions made without citation of any references in the Office action mailed on September 14, 2004 (the “Previous Office Action” hereinafter). Applicant respectfully takes exception to these statements.

First, the Amendment filed on December 14, 2004 (the “Previous Amendment” hereinafter), contains numerous traverses of the factual statements. See, for example, the Previous Amendment, page 16, lines 7-8 (“the Examiner simply asserts Official Notice and uses Applicant’s own disclosure to reject Applicant’s claims which is not permitted by case law”). This and identical or similar remarks throughout the Previous Amendment constitute traverses. These remarks have been found to be persuasive. Office Action, page 2. (“The applicant’s remarks and amendments have been carefully considered and found to be persuasive.”)

Second, the traverses are adequate because they state, in essence, that Applicant does not believe that the limitations in issue are well known in the art. If it is the Office’s position that an adequate traverse must point out specific affirmative statements from extrinsic sources to the effect that some facts were not well known, then this is not supported by law or rules. Note that the Rule and MPEP section cited in the Office Action in support of this proposition (37 C.F.R. § 1.104(d)(2) and MPEP § 707.07(a)) apply to the Office’s actions, not to applicants’ replies.



As a matter of logic, such requirement would amount to presenting Applicant with “the classic difficulty of trying to prove a negative proposition.” *Hyson v. Neubert*, 820 F. Supp. 184, 187 & n.7 (D.N.J. 1993) (underlining added for emphasis). It is “always a difficult if not impossible burden.” *State ex rel. Quan v. Quan*, 504 So. 2d 599, 602 (La. App. 1987). The burden may become practically impossible if Applicant is required “to prove a negative proposition in circumstances in which the area of disproof is extremely wide.” *State v. Vaughn*, 44 N.J. 142, 146, 207 A.2d 537, 540 (1965); *accord Coyle v. Gardner*, 298 F. Supp. 609, 622 & n.9 (D. Haw. 1969). In this case, the area of disproof is extraordinarily broad: the sum total of knowledge in the art.

Although a general allegation that the claims define a patentable invention may not always be adequate, MPEP § 2144.03(C), Applicant indicated a belief that the facts asserted in the Official Notice were not well known and are taken from the Applicant’s disclosure. This was an adequate traverse and the burden was on the Office to cite references in support of the facts if the rejections were maintained. MPEP § 2144.03(C). For facts properly noticed, this should not have presented a difficulty, because such facts must be “capable of instant and unquestionable demonstration as being well-known.” MPEP § 2144.03(A).


**CONCLUSION**

For the foregoing reasons, Applicant respectfully submits that all pending claims are patentable. To discuss any matter pertaining to the present application, the Examiner is invited to call the undersigned attorney at (858) 720-9431.

Having made an effort to bring the application in condition for allowance, a timely notice to this effect is earnestly solicited.

Respectfully submitted,

Dated: 7/22/2005

  
\_\_\_\_\_  
Anatoly S. Weiser, Reg. No. 43,229  
674 Via de la Valle  
Solana Beach, CA 92075  
(858) 720-9431